

A New Castle City Board of Adjustment Hearing took place on March 29, 2011 at 7 p.m. in the City of New Castle's Town Hall.

Present: John F. Klingmeyer, Mayor
Daniel Losco, City Solicitor
David Athey, City Engineer

City Personnel: Jeff Bergstrom, City Code Official

Mayor Klingmeyer called the meeting to order at 7:15 p.m.

The Mayor read the Notice of Public Hearing that states, "An application has been filed by Delmarva Investment Group, LLC, 1501 Elm Street, Stanton, DE 19804, for an enlargement or extension of a non-conforming use or structure so as to permit a total of 4 dwelling units at the property located at 1101 Wilmington Road, New Castle, Delaware, parcel number 21-007.00-200. (The property presently has 3 dwelling units in two different buildings). In addition, the following variances are requested for this property: (i) an area variance for the property to contain 4 dwelling units; (ii) an area variance to allow the density of the development to remain as it currently exists; (iii) a front yard setback variance and a side yard variance on the northern side of the Wilmington Road house; (iv) a front yard and rear yard variance for the 11th Street structure to remain in its current location; and (v) a parking variance to allow for 2 on-street parking spaces.

For the purpose of considering this application, the Board of Adjustment will hold a Public Hearing on Tuesday, March 29, 2011, at 7 p.m. in Old Town Hall, 2nd Floor, located at 2nd and Delaware Streets, New Castle, Delaware.

An affidavit of publication was published in the News Journal and the New Castle Weekly on 3/9/11. Mr. Bergstrom testified the property has been properly posted.

Solicitor Losco asked Mr. Bergstrom if proper public notice took place in accordance with Section 230-57(D) (2) (c). Mr. Bergstrom confirmed that notice was accomplished and no responses were received.

(Mr. James Fulton was sworn in by the Mayor.)

Mr. Brian Murray presented. Mr. Murray represents Delmarva Investment Group LLC. At the first meeting arguments were presented in favor of the variances except for Section 230-57(D) - structural alterations, which refers to enlargement of a non-conforming use. They believe this is a structural alteration involving enlargement of a non-conforming use on the property in question. There are two (2) buildings on the property that are non-conforming in this zone and three (3) dwelling units in these two (2) buildings that are non-conforming use. They are asking to do minor structural alterations to the property to add one (1) additional unit in the building facing Wilmington Road, enlarging from three (3) to Four (4) dwelling units. They also believe this will not be contrary to public interest. To enforce the Code as it is written would be a hardship on the building. If they renovate this building to only one (1) dwelling unit it would contain about six (6) bedrooms. The market would be small and the owner would have less control over the number of occupants in the property. They believe they would have better control over the property with two (2), two (2) bedroom units and would have less occupancy of the property and less dense use of the property. There will be no external construction involved; everything is inside. No weight-bearing walls will be torn down and some walls will be added.

Solicitor Losco asked if structural alterations will take place in accordance with the Code. Mr. Murray said they will be cutting off some rooms, adding walls to block access from one part to another, adding a kitchen in both units, bathroom construction and plumbing work.

Mr. Fulton said there is no structural work needed inside the property. Everything will be partitioned off; nothing is load bearing. They plan on installing separate heating units, windows and siding on the outside. Building permits will be required. They will be taking down the fence near the neighbors' property and installing a split-rail fence on the entire property.

Mr. Murray continued his testimony. They believe they are in harmony with the Code and are not being injurious to adjacent property owners. They have received many favorable comments from neighbors that they are in favor of this use of the property. It will enhance the community and not be detrimental. They ask the Board to grant the enlargement of this non-conforming use.

Solicitor Losco asked if the applicant considered three (3) bedrooms per unit. Mr. Murray responded "no" because living space and a kitchen area are needed in both units.

Mr. Athey referred to the plan that shows two (2) bedrooms on the first floor and three (3) bedrooms on the second floor. Solicitor Losco wants to be clear on the number of bedrooms. Mr. Fulton clarified the plan noting two (2) bedrooms per unit. Currently there is a 3 foot door they plan on opening up to 6 feet that will require installation of a beam. Although he does not know the definition of "structural alteration," Mr. Athey commented they are adding numerous linear feet of walls according to the plan. They are not load-bearing walls but he considers walls to be structural additions. Solicitor Losco said a definition is provided in the ordinance and he believes the applicant meets the definition by adding the beam. The footprint of the building is not increasing. Mr. Fulton described the cosmetic changes planned for the exterior of the property.

Solicitor Losco asked what the Code requires for parking for four (4) units if granted. Mr. Bergstrom said if they are separate families they are all two (2) spaces per unit. There are two (2) garages on the property facing 11th Street that have two (2) on-street parking spots for each unit. Mr. Fulton said there are eight (8) parking spaces now and it will likely be used for the 1101 property. He has not experienced any parking problems since taking ownership of the property.

The property is in an R1 district. Permitted uses are a single-family, detached dwelling. Mayor Klingmeyer referred to Section 230-57(C)- variances and conditions governing applications. He is troubled by number 3. "Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this chapter in the district involved or any use expressly or by implication prohibited by the terms of this chapter in said district." Solicitor Losco recommended the applicant use subsection D, which is not a variance application but recognizes in this Code that if you have an existing non-conforming structure or use it may, under limited circumstances, be expanded which is why the applicant amended his application and is before us now. He believes the entire property is a non-conforming use; this is an R1 zone with three (3) permitted uses in two (2) buildings and they are permitted to continue. We are weighing whether or not that non-conforming use can be expanded by one (1) additional unit. 230-57(D)(2)(e) states "the application must show they are making some type of structural alteration, it will result in enlargement or extension of the non-conforming use, it is in harmony

with the general purpose of the chapter, and it won't be injurious to the neighborhood or detrimental to the public welfare.ö

Discussion turned to 230(D)(2)(f) which says öif approved by the Board of Adjustment, a building devoted to a non-conforming use may be extended either on the same lot or on a contiguous lot under same ownership at the time of enactment of this chapter subject to the following conditions.ö Mr. Athey reviewed the subsection further. If an applicant is also seeking various area (front and side yard) setbacks, how can the extension be granted because they also need other variances but this Board can't grant the variances because of the use issue. Mr. Bergstrom thinks this section refers to the actual expansion of the footprint on the building on that lot or another lot.

Mr. Athey noted the minimal changes the applicant will be making can't be greater than 50% of the value of the house. He is satisfied the applicant has met this criteria.

Solicitor Losco cited 230-57-ögives the Board the power to subscribe safeguardsí ö The applicant argued about the house being rented out to a group of people and Solicitor Losco would like to see the applicant agree to no more than two (2) bedrooms in each unit of the structure, should relief be granted. The applicant has no opposition to this.

For the record, there is no one in attendance to oppose or support this application.

Solicitor Losco noted this is a property that is a little rundown, it is oversized for its location and a single-family dwelling on a main road, and it isn't a very attractive rental property and may be subject to further disrepair. It is important to note that no member of the public is in attendance in spite of the fact that everyone within 300 feet was notified and it was posted in newspapers. The applicant has provided several letters of support at the last hearing. They already have the non-conformity and are entitled to three (3) units and the community has absorbed the property as a multi-family property. The building's outside appearance, use and occupancy does not violate any Code provisions. This ordinance permits expansion of a non-conforming use. It is in harmony with the purpose and intent of the chapter and the lack of any complaints show it is not injurious to the neighborhood or detrimental to the welfare of the public. The applicant has adequate off-street parking in spite of the request for parking variance. He supports the application with the condition he would like to see no more than two (2) bedrooms in each of the units.

Mr. Athey believes the application is in harmony with the community and it is not injurious to the Code. He supports the condition Solicitor Losco added and supports the application.

Mayor Klingmeyer agrees noting the subsection provides a legal remedy for a reasonable problem.

Solicitor Losco made a motion to approve the enlargement application with the condition that each of the two (2) units at 1101 Wilmington Road house has no more than two (2) bedrooms. Mr. Athey seconded the motion.

A roll call vote was taken.

Mr. Athey voted in favor of the application citing the rationale he just stated.
Solicitor Losco voted in favor of the application citing his earlier statement.
Mayor Klingmeyer voted in favor of the application citing his earlier rationale.

The application was approved by unanimous vote.

Solicitor Losco informed of several area variance applications being requested. The area variance for the property to contain four (4) dwelling units is off the books. Mr. Murray agreed.

Solicitor Losco supports the remaining variances as follows: an area variance to allow the density of the development to remain as it currently exists; a front yard setback variance and a side yard variance on the northern side of the Wilmington Road house; a front yard and rear yard variance for the 11th Street structure to remain in its current location; a parking variance to allow for two (2) on-street parking spaces.

His reason is because nothing will change. The building is the same, same location, same setbacks, and same parking arrangements. All renovations are interior and the extra unit will be interior as well.

He then reviewed the standards listed in Section 230-57(C). Special conditions and circumstances exist peculiar to the land, structure, or buildings ó their presence is unique. Properties built after adoption of the Code would not be built this way.

Literal interpretation of the provisions of this Code would deprive the applicant of rights commonly enjoyed by other properties in the same district ó using a structure of this size for its intended purpose is the normal use of this property. Converting it to two (2) units isn't outside ordinary usage for a structure of this size.

Special conditions and circumstances do not result from the actions of the applicant ó the applicant did not put the building where it is.

Granting the variance requested will not convey on the applicant any special privilege that is denied by this Code to other lands, structures, or buildings in the same district ó the applicant had the ability to continue as a non-conformity and we are legitimizing what exists at this time.

At the previous hearing on this matter that was continued to tonight, Mr. Athey said the Board didn't feel the Code allowed them to grant the variance and inquired how approving the enlargement application now frees the Board up. Solicitor Losco said no action was taken on variance issues at the first hearing and was continued because the applicant could not get an area variance to expand a non-conforming use. It was suggested the applicant amend their application.

Solicitor Losco made a motion to approve the dimensional variances as follows: area variance to allow the density of the development to remain as it currently exists, a front yard setback variance and a side yard variance on the northern side of the Wilmington Road house, a front

yard and rear yard variance for the 11th Street structure to remain in its current location, and a parking variance to allow for two (2) on-street parking spaces. Mr. Athey seconded the motion. A roll call vote was taken.

Solicitor Losco voted in favor citing the reasons he provided.

Mr. Athey voted in favor citing rationale provided.

Mayor Klingmeyer voted in favor citing the same rationale.

The motion was approved by unanimous vote.

The hearing was adjourned at 7:55 p.m.

Respectfully submitted,

Debbie Turner

Debbie Turner

Stenographer